

### AGP-3. COST ACCOUNTING STANDARDS

- (a) Unless the Contract is exempt under 48 CFR, Subparts 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this Contract, shall:
- (1) (CAS-Covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this Contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a "Cost Accounting Standards" (CAS) provision. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
  - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting Contract performance cost data concerning this Contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract being performed by the Contractor and subject to CAS requirements, the change must be applied prospectively to this Contract and the Disclosure Statement must be amended accordingly. If the Contract price or cost allowance of this Contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this Article, as appropriate.
  - (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this Contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
  - (4) (A) Agree to an equitable adjustment as provided in the "Changes" Article of this Contract if the Contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this Article, the Contractor is required to make to the Contractor's established cost accounting practices;
  - (B) Negotiate with the Government to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this Article; provided that no agreement may be made under this provision that will increase costs paid by the Institute.
  - (C) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(A) of this Article, negotiate an equitable adjustment as provided in the "Changes" Article of this Contract.
  - (5) (A) Agree to an adjustment of the Contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the Institute. Such adjustment shall provide for recovery of the increased costs to the Institute, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the Institute was made to the time the adjustment is effected. In no case shall the Institute recover costs greater than the increased cost to the Institute, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Institute.
  - (B) The Contractor shall support the Institute in assisting the Government in monitoring Contractor and subcontractor compliance with CAS requirements, with particular reference to providing any evidence of Contractor and subcontractor noncompliance coming to the attention of the Contractor and shall be responsible for entering into modifications of this Contract and/or subcontracts necessary to reflect adjustments due to CAS noncompliance.

- (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable Cost Accounting Standard in 48 CFR, Part 9904, or a CAS rule or regulation in 48 CFR, Part 9903, and as to any cost adjustment demanded by the United States, or by the Institute on behalf of the United States, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute between the Institute and the Contracting Officer concerning a question of fact within the meaning of the "Disputes" clause of the Prime Contract.
- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this Article.
- (d) The Contractor shall include the substance of this Article in all negotiated subcontracts which the Contractor enters into, except for paragraph (b), and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date, or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data; provided however, this requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on:
  - (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
  - (2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1, or any corresponding implementing or supplementing provisions in the NFS.

NOTE 1: Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

NOTE 2: In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in subparagraph (a)(5) of this Article. In view of the foregoing and since the Contract may be subject to adjustment under this Article by reason of any failure to comply with rules, regulations, and Standards as specified in 48 CFR, Subpart 9903.3, and 48 CFR, Subpart 9904, and any corresponding implementing or supplementing provisions in the NFS, in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its Contract with the Institute. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

NOTE 3: If a subcontractor is a business unit which, pursuant to 48 CFR Subpart 9903.201-2(b), is entitled to elect modified contract coverage and to follow Standard 9904.401 (Consistency in Estimating, Accumulating, and Reporting Costs) and Standard 9904.402 (Consistency in Allocating Costs Incurred for the Same Purpose), both of which standards are referenced in 48 CFR Subpart 9903.201-2(b), the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, and any corresponding implementing or supplementing provisions in the NFS, shall be inserted in lieu of this Article.

NOTE 4: The terms defined in 48 CFR 9903.301, Definitions, and FAR 31.001 shall have the same meanings herein. As defined in 48 CFR 9903.301, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (i) the solicitation to all competitors is identical; (ii) price is the only consideration in selecting the subcontractor from among the competitors solicited; and (iii) the lowest offer received in compliance with the solicitation from among those solicited is accepted.